

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

v.

PERMASTEELISA CLADDING  
TECHNOLOGIES , INC.,

Respondent.

CASE NO. OSH 2007-20

ORDER NO. 303

ORDER GRANTING, IN PART, AND  
DENYING, IN PART,  
COMPLAINANT'S MOTION FOR  
RECONSIDERATION

ORDER GRANTING, IN PART, AND DENYING,  
IN PART, COMPLAINANT'S MOTION FOR RECONSIDERATION

On November 24, 2008, the Hawaii Labor Relations Board (Board) issued Decision No. 24, Findings of Fact, Conclusions of Law, and Order (Decision) in this matter.

On December 4, 2008, Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (DIRECTOR) filed a Motion for Reconsideration of the Board's Findings of Fact, Conclusions of Law, and Order of November 24, 2008. The DIRECTOR requested the Board to reconsider certain portions of its Decision, i.e., clarify an apparent inconsistency pertaining to Citation 2, Item 1 where the Board at p. 2 of the Decision stated that it was vacating the Citation and on p. 16, the Board indicated it affirmed Citation 2, Item 1; make its Findings of Fact reasonably clear pertaining to Citation 1, Item 1 - the Decision was not clear whether the Board concluded that the DIRECTOR met its prima facie case or that the Board considered and evaluated the affirmative defense of employee misconduct; and the DIRECTOR requested that the Board make its Findings of Fact reasonably clear pertaining to Citation 1, Item 2a - that the Board support its conclusion that Respondent did not violate the standard.

On December 5, 2008, the DIRECTOR filed a Supplemental Memorandum in Support of the Director's Motion for Reconsideration of the Board's Findings of Fact, Conclusions of Law, and Order, of November 24, 2008 with the Board. The DIRECTOR supplemented its argument in its motion for reconsideration by contending that 29 CFR 1926.502(a) regarding personal fall arrest systems and 29 CFR 1926.502(d)(15) should be construed together and that someone who is "qualified" in the use and operation of the anchor bolt, should supervise its installation. The DIRECTOR argued that whether a fall protection system is found to be in good working order does not resolve the question of the

employer's duty to "install" all fall protection systems required by Hawaii Administrative Rules (HAR) § 12-121.2.

On December 11, 2008, Respondent filed its Opposition to Director's Motion for Reconsideration of the Board's Findings of Fact, Conclusions of Law, and Order of November 24, 2008 with the Board. Respondent argued that there was no legal basis for filing a motion for reconsideration and the DIRECTOR failed to state proper grounds for reconsideration. Respondent argued that the purpose of the motion is to allow the parties to present new evidence or arguments that could not have been presented during the earlier adjudication. Respondent contends that the Board's Findings of Fact are clear and correct and that the DIRECTOR did not offer new evidence and/or arguments that it was prevented from presenting at the hearing in this matter.

In considering the instant motion, "[t]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10 (1992). In this case, the DIRECTOR requests clarification of the Board's findings and conclusions by substantiating its findings and conclusions but the DIRECTOR failed to present newly discovered evidence or arguments which by due diligence could not have been previously presented during the case-in-chief. Having considered the arguments and authorities presented by the DIRECTOR, the Board is not persuaded that its findings of fact and conclusions of law in Decision No. 24 should be reconsidered and clarified, except to correct the error regarding Citation 2, Item 1, in the introduction on p. 2 of Decision No. 24 which states:

Based on a thorough review of the entire record and the arguments presented by the parties, the Board makes the following findings of fact, conclusions of law, and order vacating the Director's Citation 1, Item 1, Citation 1, Item 2a, Citation 1, Item 2b, and Citation 2, Item 1 and their associated characterizations and penalties.

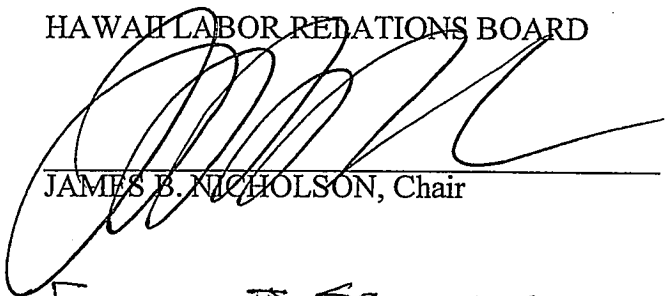
The sentence should be corrected to read:

Based on a thorough review of the entire record and the arguments presented by the parties, the Board makes the following findings of fact, conclusions of law, and order vacating the Director's Citation 1, Item 1, Citation 1, Item 2a, and Citation 1, Item 2b, and their associated characterizations and penalties and affirming Citation 2, Item 1 and its characterization.

Accordingly, the instant motion for reconsideration of Decision No. 24 is granted, in part, and denied, in part.

DATED: Honolulu, Hawaii, December 17, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

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